

LEGISLATIVE BILL 485

Approved by the Governor April 7, 2005

Introduced by Business and Labor Committee: Cunningham, 40, Chairperson;
Burling, 33; Combs, 32; Kremer, 34; Preister, 5; Schimek, 27

AN ACT relating to tort claims; to amend sections 81-8,211, 81-8,224, 81-8,225, and 81-8,239.02, Reissue Revised Statutes of Nebraska; to change state tort claim approval requirements and payment provisions; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 81-8,211, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,211. Authority is hereby conferred upon the State Claims Board, acting on behalf of the State of Nebraska, to consider, ascertain, adjust, compromise, settle, determine, and allow any tort claim. If any tort claim is compromised, settled, or allowed in an amount of more than five thousand dollars, the unanimous approval of all members of the State Claims Board shall be required. If any tort claim is compromised, settled, or allowed in an amount of more than twenty-five thousand dollars, the claim shall also and such claims also shall be submitted for approval by the district court for Lancaster County. When approval of the district court is required, the Attorney General shall make application for such approval and shall file with the application a complete record of the action of the State Claims Board on such claim. The claimant may join in such application, and if the claimant does so, the court may proceed to act on the application without further notice to either party. If the claimant does not join in the application, the court shall require actual notice to all parties before acting on the application. The court may deny the application for any legal and sufficient reason or may direct the State Claims Board to conduct further hearings on any material issues. The fees of the clerk of the district court for filing, docketing, and indexing such application shall be five dollars.

Sec. 2. Section 81-8,224, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,224. (1) Any award to a claimant and any judgment in favor of a claimant under the State Tort Claims Act shall be certified by the State Claims Board to the Director of Administrative Services who shall promptly issue a warrant for payment of such award or judgment out of the Tort Claims Fund or State Insurance Fund, as appropriate, if sufficient money is available in ~~such~~ the fund, except that no portion in excess of fifty thousand dollars of any award or judgment shall be paid until such award or judgment has been reviewed by the Legislature and specific appropriation made therefor. All awards and judgments which arise out of the same facts and circumstances shall be aggregated for the purpose of determining whether such awards and judgments shall be reviewed by the Legislature and specific appropriation made therefor.

(2) Any award, judgment, or associated costs on a claim which is covered by liability insurance or by group self-insurance, the amount of which falls within the applicable policy's self-insured retention, shall be paid from the State Insurance Fund.

(3) Delivery of any warrant in satisfaction of an award or judgment shall be made only upon receipt of a written release by the claimant in a form approved by the State Claims Board.

Sec. 3. Section 81-8,225, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,225. There is hereby established in the state treasury a Tort Claims Fund from which ~~all~~ awards, ~~or~~ judgments, and associated costs under the State Tort Claims Act ~~shall~~ may be paid, including appeal bonds or the reasonable costs associated with a required appearance before any tribunal. This fund shall be in such amount as the Legislature determines to be reasonably sufficient to meet anticipated claims. When the amount of money in the fund is not sufficient to pay any awards or judgments under such act, the Risk Manager shall immediately advise the Legislature and request an emergency appropriation to satisfy such awards and judgments. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 4. Section 81-8,239.02, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,239.02. The following separate permanent revolving funds are established in the state treasury for use under the Risk Management Program according to the purposes for which each fund is established:

(1) The State Insurance Fund is hereby created for the purpose of purchasing insurance to cover property, fidelity, and liability risks of the state and workers' compensation claims against the state and other risks to which the state or its agencies, officials, or employees are exposed and for paying related expenses. The fund may receive deposits from assessments against state agencies to provide insurance coverage as directed by the Risk Manager. The Risk Manager may retain in the fund sufficient money to pay for any deductibles, self-insured retentions, or copayments as may be required by such insurance policies;

(2) The State Self-Insured Property Fund is hereby created for the purpose of replacing, repairing, or rebuilding state property which has incurred damage or is suffering other loss not fully covered by insurance and for paying related expenses. The fund may receive deposits from assessments against state agencies to provide property coverage as directed by the Risk Manager. The Risk Manager may assess state agencies to provide self-insured property coverage; and

(3) The State Self-Insured Indemnification and Liability Fund is hereby created for the purpose of paying compensable liability and fidelity claims against the state or its agencies, officials, or employees which are not fully covered by insurance and for paying indemnification claims under section 81-8,239.05. Indemnification claims shall include payments for awards, settlements, and associated costs, including appeal bonds and reasonable costs associated with a required appearance before any tribunal. The fund may receive deposits from assessments against state agencies to pay for the costs associated with providing and supporting indemnification claims. The creation of this fund shall not be interpreted as expanding the liability exposure of the state or its agencies, officials, or employees.

Sec. 5. Original sections 81-8,211, 81-8,224, 81-8,225, and 81-8,239.02, Reissue Revised Statutes of Nebraska, are repealed.